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Tribes' Mobilization On Climate Change Gathers Steam

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Native American tribes in the United States have long been leaders in environmental protection and since the U.S. pulled out of the Paris Climate Agreement in June 2017, they have stepped up efforts at the local, state, national and international levels to combat climate change. As inherently land-based communities, tribes are disproportionately affected by the impacts of climate change and are less likely to relocate from the places that have been their homeland since time immemorial. Action on climate change also presents new opportunities. Tribes are uniquely positioned to employ their abundant traditional knowledge of the natural environment to guide comprehensive approaches to climate adaptation and mitigation. In addition to these issues, this article discusses new doors that are opening for tribes willing to exercise their sovereignty to push for bold action at the local, state, national and international levels.

Disproportionate Effects of Climate Change on Tribes

Tribes' response to climate change is influenced by three factors. First, tribal communities are inherently land-based with many tribal members participating in traditional hunting, fishing and gathering for subsistence and as a core aspect of their culture and spirituality. Impacts such as changing temperatures and precipitation, increased droughts, flooding and sea level rise, and shifting species habitat, reverberate throughout the ecosystems on which tribal members rely for these traditional practices and spiritual ceremonies. Beyond subsistence and culture, sea level rise and uncontrolled wildfires can be a matter of life and death for certain tribal communities. For example, scientists predict sea level to rise as much as 27 inches along Washington state's coastline, eliminating 58 percent of low tidal areas and coastal erosion threatens at least 31 Alaska native villages.[1] Thus, tribes are particularly vulnerable to the impacts of climate change.

Second, unlike communities that have the option to relocate to towns safe from wildfires or sea level rise, tribal communities cannot so easily relocate. Tribes have lived on their ancestral lands since time immemorial. Tribes reserved land through century old treaties and congressional acts as a "permanent home" and that land remains the place where relatives and ancestors are buried.[2] Furthermore, tribes and tribal members

derive certain rights and protections from reservation and other lands.[3] Thus, tribal communities are understandably and highly reluctant to abandon their homelands.

Third, unlike local governments, tribes have limited ability to raise tax revenue to fund projects for climate adaptation and mitigation.[4] Moreover, the Trump administration has indicated that it is slashing already meager funding for tribal programs.[5] Thus, many tribes lack sufficient financial resources and capacity to adequately respond to climate change.

In these ways, tribes are disproportionately affected by climate change. Historically, they have also lacked the means to directly shape the economic and legislative responses to historic events threatening their communities — but not this time.

Tribes Spearhead Climate Legislation at the State Level

As a crucial first step in combatting climate change, more and more tribes across the country are engaging in comprehensive climate change research and assessments to identify the likely impacts of climate change on their tribal lands and traditional practices which will lay the ground work for future action.[6] Other tribes are choosing to litigate specific issues related to climate change and fossil fuel consumption, such as the protection of endangered species,[7] regulation of oil and gas drilling,[8] and coal mining.[9] As a global phenomenon, however, an effective response to climate change requires tribes to coordinate with neighboring jurisdictions.

In one of the most significant achievements in recent years, tribes in Washington state have partnered with a diverse cross-section of advocacy organizations, including environmental, union, low-income and communities of color, to file an initiative to the citizens of Washington state. As proposed, the Protect Washington Act would achieve a yet-unattainable victory — a $15 fee on carbon pollution.[10] If enacted into law, the initiative would create a long-awaited, dedicated source of revenue for projects aimed at off-setting the impacts of climate change, reducing dependence on fossil fuels and lowering greenhouse gas emissions in Washington state. Tribes are eligible to receive project funding under the initiative and equally meaningful, they gained a seat at the table where decisions regarding climate mitigation and adaptation are made.

In addition to imposing a fee on carbon pollution, the initiative establishes three new accounts within the state treasury to fund projects that protect clean air, water, forests and communities which meet carefully selected criteria. The first account funds clean air and clean energy projects, such as renewable energy, vehicle fuel efficiency, energy efficiency upgrades in buildings, and a wide range of carbon sequestration projects. To ensure that any financial burden resulting from the carbon fee is not born disproportionately by Washington's lower-income citizens, the initiative requires the creation of an energy assistance program for low-income people and provides direct assistance for workers in the fossil fuel industry to transition to new jobs in the clean energy sector.

The second account funds projects to protect the health of Washington's waters and forests through the restoration of estuaries, fisheries and shoreline habitat. This account also targets flood reduction, adaptation to ocean acidification, and groundwater modeling. Notably, funds from this account may not be used in a manner that would violate treaty rights or otherwise harm critical habitat.

The third and last account funds projects that assist communities with wildfire preparedness, suppression and recovery, and projects that help pay for tribal communities impacted by flooding or sea level rise to relocate to higher ground. The initiative also accounts for the fact that the limited capacity

of some communities may hamper their efforts to apply for project funding, and therefore, provides funding dedicated to capacity building to those communities.

Equally important as the initiative's substantive provisions that build resilience to climate change, the initiative also provides for representation of traditionally underrepresented communities, including tribes, on the Public Oversight Board, the body charged with administering the new law and promulgating regulations, as well as on the advisory panels that assist the board. The initiative also builds on the promise of the Centennial Accord[11] — the landmark agreement signed by the state and 29 tribes of Washington — to ensure that in carrying out the new law, government-to-government relations between the state and tribes affected by projects funded by the accounts in fact provide meaningful protections for tribal sovereignty.

Tribes Stay Firm in Their Commitment to the Paris Agreement

At the national level, on Jan. 26, 2018, the Affiliated Tribes of Northwest Indians ("ATNI") and eight tribes[12] from Oregon, California, Washington and Montana signed the We Are Still In Declaration,[13] joining a growing chorus of cities, states, tribes, faith organizations, corporations and universities, spanning all 50 united states, as an affirmative response to the Trump administration's withdrawal from the Paris Agreement. Signatories to the declaration agree to uphold the commitment made in the Paris Climate Agreement to keep global warming below two degrees Celsius and to accelerate the transition to a clean energy economy.[14] In signing the declaration, the chairman of the Hoh Tribe stated, "We Are Still In is an opportunity to voice our commitment to taking care of our environment and taking an active role in defining our future."[15] Thus, tribes' effective mobilization on climate change at the national level just may create opportunities to enhance tribal self-determination.

Tribal Coordination at the International Level

This year marks the tenth anniversary of the establishment of the International Indigenous Peoples' Forum on Climate Change ("IPPFCC"), the caucus for indigenous people participating in the United Nations Framework Convention on Climate Change ("UNFCC") process, including the annual Conference of the Parties ("COP"). Most recently, the IIPFCC has requested that the UNFCC establish a dedicated fund to be "directly accessed and managed by indigenous peoples" to enhance indigenous communities' capacity to adapt and mitigate the impacts of climate change.[16] While tribes have been poised to engage in multilateral negotiations on climate change through the IPPFCC, their influence has been more limited than many had hoped. Tribes are currently exploring new and innovative ways to have greater impact at the international level.

Tribes are not waiting for leadership on climate change from the federal level. Tribes' mobilization at all levels of government offers opportunities not only to protect tribal communities and the natural resources that sustain them, but also to advance tribal sovereignty and self-determination.

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[1] Washington Department of Fish and Wildlife, Conservation, available at https://wdfw.wa.gov/conservation/climate_change/

[2] Winters v. United States, 207 U.S. 564, 565 (1908).

[3] See, e.g., 25 U.S.C. § 5108 (exempting trust lands from state and local taxation).

[4] Kelly S. Croman and Jonathan B. Taylor, Why Beggar Thy Indian Neighbor, the Case for Tribal Primacy in Taxation in Indian Country, May 4, 2016 at 4 (discussing limitations on tribes' effective ability to tax in Indian country) Discussion Draft available at http://nni.arizona.edu/application/files/8914/6254/9090/2016_Croman_why_beggar_thy_Indian_neighbor.pdf

[5] See America First, A Budget Blueprint to Make America Great Again, Office of Management and Budget 2018 (reducing funding for Bureau of Indian Affairs and other programs benefitting Indian tribes) at 27, available at https://www.whitehouse.gov/wp-content/uploads/2017/11/2018_blueprint.pdf

[6] See, e.g., Tribal Climate Change Project (collecting tribal climate change assessments by tribes and tribal consortia) available at https://tribalclimate.uoregon.edu/tribal-profiles/

[7] Crow Indian Tribe v. United States, Case No. CV 17-117-M-DLC (D.Mont) (challenging the United States' delisting of grizzly bear under the Endangered Species Act).

[8] State v. United States Bureau of Land Mgmt., 277 F. Supp. 3d 1106 (N.D. Cal. 2017) (ruling that Bureau of Land Management's postponement of compliance date in rule governing waste from oil and gas drilling).

[9] Citizens for Clean Energy, Northern Cheyenne Tribe, et al. v. U.S. Dep't of Interior, 2017 WL 1173696 (D.Mont.) (challenging repeal of moratorium on federal coal leasing).

[10] https://wecprotects.org/weve-filed-an-initiative-protect-washington-act/

[11] Centennial Accord between the Federally Recognized Indian Tribes in Washington State and the State of Washington, available at http://goia.wa.gov/Government-to-Government/Data/CentennialAccord.htm

[12] Signatory tribal nations include the Blue Lake Rancheria (CA), Nisqually Indian Tribe (WA), Suquamish Tribe (WA), Confederated Tribes of the Umatilla Indian Reservation (OR), Hoh Tribe (WA), Confederated Salish and Kootenai Tribes (MT), Quinault Indian Nation (WA), Jamestown S'Klallam (WA).

[13] Open letter to the international community and parties to the Paris Agreement from U.S. state, local and business leaders (proclaiming continuing support for climate action to meet the Paris Agreement), available at: https://www.wearestillin.com/we-are-still-declaration

[14] Paris Agreement, 2015, Art. 2 § 1(a), available at https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf

[15] Affiliated Tribes of Northwest Indians and Northwest Tribes Declare Formal Support for the Paris Climate Agreement (Jan. 26, 2018), available at http://atnitribes.org/sites/default/files/WASI%20-%20ATNI%20Press%20Release.pdf

[16] See International Indigenous Peoples' Forum on Climate Change, Key Issues, available at https://iipfcc.squarespace.com/key-issues/